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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/393,677	09/10/1999	TETSURO MOTOYAMA	5244-0099-2X	3114

22850 7590 03/25/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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NGUYEN, NHON D

ART UNIT	PAPER NUMBER
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2179

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/393,677		MOTOYAMA ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Nhon (Gary) D Nguyen		2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-9,11-17,19-25 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11-17,19-25 and 27-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This communication is responsive to response, filed 08/16/2004.
2. Claims 1, 3-9, 11-17, 19-25 and 27-32 are pending in this application. Claims 1, 9, 17 and 25 are independent claims. In this response, no claim is canceled, no claim is amended, and no claim is added. This action is made non-final.

In view of the Appeal Brief filed 08/16/2004, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

#### ***Information Disclosure Statement***

3. The information disclosure statements filed on 07/23/2004 and 11/09/2004 regarding copending application is placed in the application file, and the information referred to therein has been considered.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 3-9, 11-17, 19-25 and 27-32 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 101***

5. Claims 25 and 27-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 25 and 27-32 are rejected as non-statutory. The claims recite "a computer program product", which is defined in specification on page 36 as being "any type of media suitable for storing electronic instructions", which could include intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of being touched or perceived absent the tangible medium through which they are conveyed.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1, 3-9, 11-17, 19-25 and 27-32 of instant Application No. 09/393,677 (hereafter '677) are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-9, 11-17, 19-25 and 27-32 of copending Application No. 09/440,692 (hereafter '692). Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claims system, method, and software product for monitoring data of selecting of the plurality of operations of the interface and to generate/transfer a log of the monitored data in a form of an abstract class is

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obvious variation of generating/transferring the monitored data by encoding/decoding into/from the log file.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Claim Rejections - 35 USC § 103*

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-9, 11-17, 19-25 and 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frantz (6,003,070) in view of Lin et al. ("Lin", 6,163,802).

As per claims 1, 9, 17 and 25, Frantz teaches a computer implemented method and corresponding system for monitoring usage of an interface of a device comprising the steps/means:

A device comprising an interface (10 of fig. 1), the interface comprising a plurality of operations (activation criteria) to be selected by a user (col. 4, lines 10-30 and col. 5, lines 3-13);

a monitoring unit (31 of fig. 2) configured to monitor data of selecting of the plurality of operations of the interface by the user, and to generate a log of the monitored data (32 of fig. 2), the log of the monitored data being stored in the device (30 fig. 2; col. 6, lines 1-11), and to automatically start the monitoring without requiring a connection to a receiving device to which the log of monitored data is to be sent (col. 5, lines 32-39 and col. 5, lines 3-13);

a communicating unit configured to receive an object derived the log of the monitored data, and to automatically communicate the log of the monitored data by a unidirectional communication without requiring input from the device to which the log of the monitored data is to be sent (col. 5, lines 32-39, col. 5, lines 3-13 and col. 6, lines 12-20).

Frantz does not explicitly disclose the log of the monitored data being in a form of an abstract class. Lin teaches log file collector is an abstract class (col. 7, lines 45-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teaching from Lin of generating the log of the monitor data in form of an abstract class in Frantz's system since it would have made it easy and efficient to generate and track log errors or messages using object oriented technology.

As per claims 3, 11, 19, and 27, Frantz teaches the device is an image forming device and the interface is an operation panel of the image forming device (col. 2, lines 15-30).

As per claims 4, 12, 20, and 28, Frantz teaches the device is an appliance and the interface is an operation panel of the appliance (col. 2, lines 15-30).

As per claims 5, 13, 21, and 29, Frantz teaches the communicating unit sends the log of the monitored data when the user exits the device (col. 4, lines 32-52).

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As per claims 6, 14, 22, and 30, Frantz teaches a setting unit configured to set a number of sessions of the device to be executed by the user prior to the communicating unit communicating the log of the monitor data (col. 4, line 56 – col. 5, line 12).

As per claim 7, 15, 23, and 31, Lin teaches the abstract class includes first and second derived classes, the first derived class storing data of one session and the second derived class storing data of the set number of sessions (col. 7, line 45 – col. 8, line 25).

As per claim 8, 16, 24, and 32, it is inherent in Frantz's system that the communicating unit communicated the log of the monitored data by Internet mail (col. 4, lines 31-36).

### ***Inquiries***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nhon (Gary) D Nguyen whose telephone number is (571)272-4139. The examiner can normally be reached on Monday - Friday with every other Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather R Herndon can be reached on (571)272-4136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nhon (Gary) Nguyen  
March 20, 2005

  
BA HUYNH  
PRIMARY EXAMINER